

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to  
Assess and Revise the Regulatory Structure  
Governing California's Natural Gas Industry.

FILED  
PUBLIC UTILITIES COMMISSION  
January 21, 1998  
San Francisco Office  
R. 98-01-011

**ORDER INSTITUTING RULEMAKING**

By this order, we open a rulemaking to assess the current market and regulatory framework for California's natural gas industry and to adopt reforms which emphasize market-oriented policies that will benefit all California natural gas consumers.

For over a decade, federal and state regulatory agencies have instituted and implemented policies to provide customers with access to competitive natural gas supplies. Reform of California's natural gas industry has opened access to highly competitive production supply markets serving the state, encouraged competition for transporting those supplies over interstate and intrastate pipelines, and provided alternatives for managing and hedging gas supply options such as storage services. The Commission encouraged these changes by adopting market-oriented policies with respect to unbundling a limited number of utility services, the pricing of utility services, and building new facilities for transmission and storage.

The majority of California's large consumers now purchase gas from competing non-utility providers such as marketers, brokers, or suppliers, and arrange to transport their supplies over the interstate and intrastate transportation systems. In this manner, these customers are able to select from competitively-priced service options. To a limited degree, residential and small commercial customers may make similar arrangements by aggregating their purchasing requirements.

These reforms have brought benefits to California consumers, but we expect that additional benefits to consumers will be realized by expanding opportunities for competition in the natural gas industry. Additionally, we believe that restructuring

California's electric utility industry serves as a major impetus to regulatory changes in the natural gas industry, which, in turn, will lead to transformation of California's energy markets. New opportunities will emerge for combined electric and natural gas services which offer greater customer choice in wholesale and retail energy services. Therefore, it is timely for the Commission to assess the natural gas industry, explore the synergies between natural gas and electricity, and consider changes to the existing market structure and regulatory framework.

The Commission signaled the need to explore its natural gas policies in its 1997 Business Plan, in which we directed the Division of Strategic Planning (Division or DSP) to provide an analysis of the long-term regulatory outlook for the natural gas industry.<sup>1</sup> Specifically, we directed the Division to assist in:

- Gauging the effects of natural gas restructuring efforts to date
- Identifying competitive issues at stake
- Clearly describing a plan and strategies for the future

The Division's report, Strategies for Natural Gas Reform: Exploring Options for Converging Energy Markets, is Attachment C to this order. The Division's report provides a basis for discussion. We invite comments on the issues raised and the recommendations proposed in the report. We also invite response to our questions in Attachment A to this rulemaking and our proposed timetable for addressing these issues (Attachment B).

### **GOALS AND PURPOSE OF THE RULEMAKING**

The goal of this rulemaking is to assess the current market and regulatory framework for California's natural gas industry. We also plan to consider reforms to the current regulatory framework which emphasize market-oriented policies to benefit all California natural gas consumers. We are concerned that California consumers have not fully benefited from past natural gas reforms. The Commission, in its electric

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<sup>1</sup> California Public Utilities Commission 1997 Business Plan, California Public Utilities Commission, San Francisco, CA, January 23, 1996, page VIII-3.

restructuring policies, has sought to bring small consumers the benefits of direct, unfiltered access to competitive services. We establish this rulemaking to ensure that all California consumers have a multitude of meaningful choices in energy services and that they have every opportunity to benefit from the greater efficiencies and service innovations we expect from competitive energy markets.

### **QUESTIONS/COMMENTS**

In order to provide the Commission with additional insight and information, we invite interested parties to respond to questions in Attachment A, which focus on the DSP report.

Interested parties are invited to file written responses to the questions on or before February 20, 1998. Written responses to this rulemaking must be filed with the Commission Docket Office and served on all parties on the service list of the proceeding and on the Division of Strategic Planning.

Within ten days from the date of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office 1) asking that his or her name be placed on the service list, and 2) stating his or her interest as either "monitoring" or "participating." <sup>2</sup> A service list will be created and distributed shortly thereafter. We note that we will be posting significant documents (e.g., rulings, decisions, comments) in this proceeding on the Commission's web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)), and many people may find it more convenient to follow this proceeding by checking the web site. No letter is needed to monitor in this fashion.

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<sup>2</sup> Persons stating an interest in monitoring the proceeding will be placed on the "Information Only" portion of the service list and not have party status. Only rulings and Commission decisions are distributed to the "Information Only" portion of the service list. Persons stating an interest in participating (i.e., intention to file comments) will be placed on the service list as a party.

**SB 960 (Ch.96-0856) PRELIMINARY SCOPING MEMO**

The rules and procedures implementing many of the reforms contained in Senate Bill (SB) 960 are found in Article 2.5 of our Rules of Practice and Procedure (Rules), which are posted on the Commission's web site. Pursuant to Rule 4(a), the rules in Article 2.5 shall apply to this proceeding.

Pursuant to Rule 6(c)(2), we preliminarily determine the categorization of this rulemaking proceeding to be "quasi-legislative," as that term is defined in Rule 5(d). In this rulemaking, we will assess the current regulatory structure governing California's natural gas industry. We also will consider reforms to our current regulatory framework to expand the use of market-oriented policies to benefit all California natural gas consumers. Our initial focus will be the Division of Strategic Planning's report, Strategies for Natural Gas Reform: Exploring Options for Converging Energy Markets and issues raised in response to the questions contained in Attachment A to this rulemaking. Consistent with the quasi-legislative categorization of this proceeding, we anticipate that there will be full panel hearings where we will receive information on legislative facts (that is, general facts that help us decide questions of law and policy and discretion (Rule 8(f)(3))). At this time, we do not see a need for hearings for the presentation of adjudicative facts (which answer questions such as who did what, where, when, how, why, or with what motive or intent (Rule 8(f)(1))). We intend to resolve this proceeding within 18 months as detailed in the attached proposed timetable in Attachment B. Commissioners Bilas and Knight, and Administrative Law Judge (ALJ) Malcolm are assigned to this proceeding.

As required in Rule 6(c)(2), any party filing responsive comments to this rulemaking shall include in its comments any objections to the categorization, need for hearing for the presentation of general facts, determination to not hold hearings for the presentation of adjudicative facts, and preliminary scope and timetable as described in the above paragraph. Rule 6.4 provides for appeal of categorization, which may only occur after the Assigned Commissioner issues a ruling, pursuant to Rule 6(c)(2), on category, the need for hearings, and the scoping memo.

If any party to this proceeding believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding, that party must file a motion no later than ten days after the filing of comments. The motion must request an evidentiary hearing and justify the need for an evidentiary hearing by identifying the material disputed factual issues on which a hearing should be held. In addition, this motion should identify the general nature of the adjudicative evidence the party proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing for the presentation of adjudicative facts will be waived if the party does not follow the above procedure for a timely request.

A copy of this rulemaking and the attachments may be obtained from the Commission's web site. Alternatively, a copy may be obtained by contacting the Commission's Central Files Office at (415) 703-2045 or the Commission's Public Advisor's Office in Los Angeles, California (213) 897-3544.

If parties are interested in participating in this rulemaking and are unfamiliar with Commission procedures, they should contact the Commission's Public Advisor Office at either (415) 703-2074 or (213) 897-3544.

**IT IS ORDERED** that :

1. A rulemaking is instituted on the Commission's own motion to assess the regulatory structure governing California's natural gas industry. The rulemaking will consider reforms to the current regulatory framework governing natural gas services in California to expand the use of market-oriented policies to benefit all California natural gas consumers. The initial focus of this rulemaking will be the Division of Strategic Planning's report, Strategies for Natural Gas Reform: Exploring Options for Converging Energy Markets (Attachment C) and issues raised in response to the questions contained in Attachment A of this order.

2. Any person or representative of an entity interested in participating in the rulemaking as a party must send a letter to the Commission's Process Office within ten (10) days from the date of this order. Any person or representatives of an entity not seeking party status but interested in being placed on the "Information Only" portion

of the service list must send a letter to the Commission's Process Office within ten (10) days from the date of this order. A service list shall be created and distributed within twenty (20) days from the date of this order.

3. After the service list is distributed, persons seeking to participate in this proceeding shall proceed as follows:

(a) To monitor this proceeding, send a written request to be accorded "Information Only" (Non-Party) status to the Commission Process Office;

(b) To appear as a party, obtain a copy of the service list from the Commission's Process Office and serve a written request for party status on the assigned Administrative Law Judge and all parties on the service list. A copy of the updated service list will be available at the Commission's website.

4. Pursuant to Rule 6(c)(2), we preliminarily determine the categorization of the rulemaking proceeding to be "quasi-legislative," as that term is defined in Rule 5(d). Consistent with the quasi-legislative categorization of this proceeding, there will be hearings at which we anticipate receiving information on legislative facts. At this time, we do not see a need for hearings for the presentation of adjudicative facts.

5. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, Washington Water Power Company, and Southwest Gas Company, are hereby named as respondents. Respondents shall file responses to the questions listed in this rulemaking as well as on the Division of Strategic Planning report, Strategies for Natural Gas Reform: Exploring Options for Converging Energy Markets, with the Commission's Docket Office on or before February 20, 1998, in accordance with Rules 2, 2.1, 2.2, 2.3, and 2.5 of the Commission's Rules of Practice and Procedure. Responses also shall be served on the Division of Strategic Planning. Other interested parties may also file comments on the same schedule.

6. As required in Rule 6(c)(2), any party filing a response shall state in that response any objections to the order regarding category, need for hearing for the presentation of general facts, determination to not hold hearings for the presentation of

adjudicative facts, and preliminary scoping memo, including the description of issues and the timetable for resolving this proceeding.

7. If any party to this proceeding believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding that party must file a motion making that request no later than ten (10) days after the filing of comments. Any right a party may otherwise have to an evidentiary hearing for the presentation of adjudicative facts will be waived if the party does not follow this procedure for a timely request.

8. The Executive Director shall cause a copy of this order to be served upon all California electric and natural gas corporations, and all interested parties in Application (A.) 96-03-031/A.96-04-030, A.96-08-043, A.94-05-010, A.91-01-006, Rulemaking (R.) 97-04-011, and R.90-02-008.

This order is effective today.

Dated January 21, 1998, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners

## **ATTACHMENT A**

### **Rulemaking Questions**

In general, the Commission wants to hear any comments with respect to the Division of Strategic Planning's report, Strategies for Natural Gas Reform: Exploring Options for Converging Energy Market, in Attachment C of the rulemaking. In addition, the Commission seeks responses to the following questions on the report.

#### **General questions:**

1. What reforms to California's regulatory policies governing its natural gas marketplace are necessary? What are the industry's and other stakeholders' priorities for natural gas reform in California?
2. Are the reform categories (i.e., consumer protection, unbundling and other reforms, regulatory streamlining, market structure reform) upon which the report is based the appropriate areas for the Commission's attention? Are there others?
3. The report discusses the synergy between the gas and electric industries, and the resulting need to establish largely parallel reforms and structures between them in order to maximize the benefits of competition. Are there differences between the gas and electric industries that make it unnecessary to establish parallel reforms:
  - in promoting customer choice for residential and small commercial consumers?
  - in consumer protections and public purpose programs?
  - in services to be unbundled, such as revenue cycle services like real-time and time-of-use metering, and in the safety issues related to providing competitive metering and after-meter services?
  - in market power or anti-competitive behavior concerns?
4. Is the converging marketplace described in the report a fair assessment of utility industry trends?
5. How should the Commission proceed in implementing the report's recommended strategies? What kinds of processes would be necessary and/or useful in considering the issues and recommendations raised in the report? Discuss a timeframe in which the recommended strategies should be implemented?

#### **Questions on Competitive Issues:**

6. Does the set of recommended strategies for regulatory reform (Chapter VIII) create an appropriate market and regulatory framework for California's natural gas industry? Does that structure enhance the benefits of competition for consumers?



7. Would separating the electric and gas distribution functions for combined utilities enhance competition between electricity and gas? Would this require divestiture to be effective?
8. Are there ways to enhance competition, particularly for the small commercial and residential market, beyond those discussed in the staff paper? Discuss in detail.
9. Does the report's recommended strategy for California's natural gas industry position California's natural gas utilities and other energy retail service providers at a disadvantage compared to other, competing out-of-state companies?

**Questions on Unbundling and Other Reforms:**

10. Are the set of unbundling and other reform strategies in Chapter IV sufficient to promote the vibrant competition envisioned in this report? What more must be done?
11. What role, if any, should the Commission play in defining and/or enforcing reliability standards, especially with regard to serving residential and small customers, in a more competitive gas supply market?

**Questions on Regulatory Streamlining:**

12. Which of the regulatory reform strategies discussed in Chapter V are most appropriate for the emerging natural gas industry? Are there other options that the Commission should explore?
13. How can the Commission's ratemaking reform efforts more effectively address the issues inherent in a competitive environment?
14. Do the benefits of ratemaking reform discussed in Chapter V exceed the costs of the effort required to make such changes?
15. Do you agree with the report's conclusion that, in the context of examining ratemaking regulation, the re-examination of the Commission's Long Run Marginal Cost policy and methodology may be necessary, as well as reconsideration of the "core/noncore distinction"?

**Questions on Market Structure:**

16. The report identifies a number of potential manifestations of anti-competitive behavior that could result from current utility vertical integration. Are these potential outcomes likely? The Commission is particularly interested in comments

on this issue from industry participants with day-to-day gas industry experience on this issue.

17. Are the options for mitigating potential anti-competitive behavior the appropriate options the Commission should consider? Are there others? What are the legal implications and/or impediments to the options?
18. Does the gas utility's access to, and use of, financial market tools (such as derivatives, hedging, etc.) raise anti-competitive issues? If so, how? And, how should these concerns be resolved?
19. Respond to the report's discussion on the implications of eliminating the utility procurement function. Are there other implications not raised in the report?
20. Respond to the criteria and other transitional measures presented in the report for eliminating the utility procurement function. What are specific criteria that should be used? Are the transitional mechanisms discussed in the report appropriate or adequate?
21. What should be the utility's role in the emerging energy marketplace with respect to the provider-of-last-resort and backstop provider?
22. Is a default provider necessary? What are the relative merits of the default provider alternatives described for Option 3 in Chapter VI?

**Questions on Consumer Protection and Public Purpose Programs:**

23. In Chapter VII, the report emphasizes the need to have consumer protections which are similar to those in the electric industry. Is this necessary? Why or why not? Are there other protections which should be considered?
24. Are there other state agencies or other entities better positioned to ensure consumer protection and monitor for customer fraud and other marketing abuses?
25. The report emphasizes the need to treat the administration and funding of gas public purpose programs similar to electric public purpose programs. Is this necessary? Why or why not?
26. What public purpose programs should be included in a nonbypassable natural gas surcharge?

(End of Attachment A)

## **ATTACHMENT B**

### **Proposed Timetable for the Rulemaking**

<b>January 21, 1998</b>	Commission issues Rulemaking.
<b>February 20, 1998</b>	Comments due from respondents and interested parties on the Division of Strategic Planning's report (Attachment C).  Comments should include any objections to the Order regarding categorization of the proceeding, need for hearing, and the preliminary scoping memo.
<b>March 2, 1998</b>	Motions for evidentiary hearings, if any, are due to be filed.
<b>March 1998</b>	Assigned Commissioner Scoping Memo Ruling issued.  Appeals to categorization may be filed no later than ten days after Assigned Commissioner Scoping Memo Ruling. (Rule 6.4(a).)  Response to the appeals may be filed no later than fifteen days after the date of categorization from which timely appeal has been taken. (Rule 6.4(b).)
<b>April 1998</b>	Full panel hearings on the rulemaking.  Reply comments filed.
<b>June 1, 1998</b>	Draft decision issued for comment.
<b>July 1998</b>	Comments filed on draft decision.
<b>July 31, 1998</b>	Proceeding submitted.
<b>August 1998</b>	Commission considers draft decision.

(End of Attachment B)

## **ATTACHMENT C**

### **Strategies for Natural Gas Reform: Exploring Options for Converging Energy Markets**

Division of Strategic Planning  
January 1998

(End of Attachment C)

See Formal File for the rest of Attachment C.